

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MIGUEL LAMENCA,
JOSEPH SANTOS,
PEDRO MEZA-BUSTAMONTE,

Appellants,

UNITED STATES OF AMERICA,

Appellee.

Nos. 21044-5-6

Appeal From the United States District Court
For the Southern District of California

APPELLANT'S REPLY BRIEF

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3 MIGUEL LAMENCA,
4 JOSEPH SANTOS,
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13 I. Appellants respectfully reiterates and invites the
14 court's attention to arguments raised in their opening brief
15 on behalf of all appellants on the issues of the sufficiency
16 of the evidence and the admission of extra judicial statements.

17 II. The trial court should have ordered the disclosure of
18 the identity of the informant.

19 The government's brief on this issue in substance is
20 that the trial court was correct because one, appellants could
21 not with certainty show what the informant's testimony would
22 be, and two, that even if the informant's identity should have
23 been revealed it was not prejudicial error because the acquittal
24 of MEZA-BUSTAMONTE would only void the conviction of co-appel-
25 lants in the substantive count and that the conspiracy
26 conviction would not fail as a matter of law.

1 (a) As to the first, appellants state that it would
2 be impossible for a defendant to state with certainty, what an
3 eyewitness's testimony would be where the very existence of
4 such an eyewitness was unknown to the defendant until the
5 trial was almost completed. Because of the limited nature of
6 the Federal Discovery Rules in existence at the time of this
7 trial there was no way for appellants to have known of his
8 existence until the trial had commenced.

9 (b) As to the second contention, simple logic and
10 common sense would compel the belief that if the eyewitness
11 identified the people who drove the Chrysler automobile as the
12 persons described by appellant MEZA-BUSTAMONTE and corroborated
13 the testimony of appellant SANTOS in any detail, acquittals of
14 all the appellants were substantially probable.

15 It is respectfully submitted that the test to be
16 applied is not whether the prosecution will dismiss a case
17 rather than comply with an order to identify the informant but
18 rather the test is could the eye-witness's testimony be helpful
19 to the defense. (R.T., p. 310-311; Roviaro v. United States,
20 352 U.S. 53 (1956), People v. McShann, 50 Cal. 2d 802; P.2d
21 330 (1958).)

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the District Court must be reversed.

Respectfully submitted:

SHEELA, O'LAUGHLIN, HUGHES & CASTRO

By Barton C. Sheela, Jr.
Barton C. Sheela, Jr., Attorneys
for Appellant Santos

SHEELA, O'LAUGHLIN, HUGHES & CASTRO

By Ramon Castro
Ramon Castro, Attorneys for
Appellants Lamenca and Meza-Bustamante

CERTIFICATE

We, Barton C. Sheela, Jr., and Ramon Castro, certify, in connection with the preparation of this brief, we have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that, in our opinion, the foregoing brief is in full compliance with those rules.

Barton C. Sheela, Jr.

Ramon Castro
Ramon Castro

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

SANDRA J. WILKES, being first duly sworn, deposes
and says:

That she is a citizen of the United States and a
resident of San Diego County, California; that her business
address is 1101 U. S. Grant Hotel, San Diego, California;
that she is over the age of eighteen years, and not a party
to the within action.

That on May 12th, 1967, she deposited in the
United States mail, San Diego, California, in the within
action, Nos. 21044-5-6 MIGUEL LAMENCA, JOSEPH SANTOS, PEDRO
MEZA-BUSTAMONTE v. UNITED STATES OF AMERICA,
in an envelope bearing the requisite postage, a copy of

APPELLANT'S REPLY BRIEF

addressed to:

Edwin L. Miller, Jr.
United States Attorney
Southern District of California
332 United States Courthouse
325 West "F" Street
San Diego, California 92101

at which place there is a delivery service by United States
mails from said post office

Sandra J. Wilkes
Sandra J. Wilkes

SUBSCRIBED and SWORN to before me

this 12th day of May, 1967.

HELEN K. TEAGUE
My Commission Expires Jan. 30, 1970

HELEN K. TEAGUE
NOTARY PUBLIC
Principal Office, San Diego Co. Calif.

Helen K. Teague
Notary Public in and for said State and County

